

ORIGINAL ARTICLE

## Reforming Women, Protecting Men: The Prosecution of Infanticide in Venezuela's Early Republic, 1820–60

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On the afternoon of June 30, 1847, Julián Guillén learned that his son, while out on an errand, had found the body of a newborn baby, partially eaten by vultures. Julián, a weaver, went to see the body himself and then informed the authorities. He asserted that the mother of the child was almost certainly his niece, María de Jesús Zerpa, who had been pregnant, but although now the size of her belly had diminished, she had no child. The authorities arrested Zerpa, who was approximately 16 years old, on the charge of infanticide. Zerpa admitted that the child was hers but maintained that she was innocent of the charge. As she explained, on June 27 she was alone because her mother was visiting the nearby town of Jají. In need of firewood, she had walked a league's distance (about 3 miles) into the woods. Suddenly she went into labor and gave birth to a stillborn boy. Too exhausted to carry the body, she left it, returned home, and went to bed. When her mother returned and asked what had happened to the baby, "I told her nothing because I was afraid she would punish me."<sup>1</sup> The authorities interviewed several of her neighbors, most of them her relatives, who said that the mother had not gone to Jají that day but rather was nearby, and that there were plenty of other family members nearby who could have helped María with household chores.

The prosecutor found María's story far from credible. Why would this teenage girl at full-term pregnancy decide to walk alone for miles into the mountains? Why did she leave the body in the mountains rather than bringing it back so that it could receive a proper burial, which would help its departed soul? The only reasonable explanation was that she had intended to kill the baby. The prosecutor asked María's mother if María was angry at the father. This, presumably, could offer a motive for killing/abandoning the child. The

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<sup>1</sup> Archivo General del Estado Mérida (hereafter AGEM), Registro Principal (RP), 1847, Infanticidio, Tomo II, Fols: 19–34. "Expediente contra Maria de Jesús Zerpa..." quote at f22

mother said no, María had never spoken about the father. The prosecutor did not ask María about the father's identity or her feelings towards him. As there was no eye witness to the birth and no solid evidence to contradict María's story of a stillborn, the prosecutor recommended acquittal. Extenuating circumstances in her favor included, "The fact that she feared some sort of punishment from her mother and does not hate he who impregnated her..."<sup>2</sup> The judge, unconvinced by her story but in agreement that there was insufficient evidence to convict, acquitted her of the charges but ordered her to pay court costs.

### The Paradox

The case against Maria de Jesús Zerpa is one example of a larger, seemingly paradoxical trend that appears in the judicial system of Mérida province, Venezuela, in the first half of the nineteenth century. In brief, the colonial state virtually never investigated or prosecuted infanticide. With the onset of Venezuelan independence (1830), the judicial system in Mérida province suddenly began to prosecute mothers whose newborn baby died under suspicious circumstances. Oddly, Mérida was the only province in Venezuela to do so. Yet more odd, these court cases almost always ended in an acquittal, leading one to wonder why the judicial officials prosecuted at all. This article seeks to understand why officials of the newly independent provincial state prosecuted this crime, and how the mothers explained their actions to those officials.

Venezuela gained independence from Spain in 1821, and became part of the mega-country Gran Colombia, which included what are modern Colombia, Ecuador, and Panama. Venezuela peacefully seceded and became fully independent in 1830, at which point we see a surge in the prosecution of infanticide cases. The "early republican" period in Latin America refers to the decades immediately after independence from Spanish/Portuguese imperial rule, as the region transitioned to independent republics, roughly the 1820s through the 1860s.

As we shall see, there is no reason to assume that the practice of infanticide was somehow distinct to early republican Mérida province. Rather, with independence, the provincial judicial system changed its relationship to this crime and began to prosecute. Despite the sparse documentary record, we can assume that infanticide had occurred throughout Venezuela since time immemorial. Infanticide may be tragic but is a widely practiced activity in human society.<sup>3</sup> Mérida was a poor, mountainous region. The pregnant women and witnesses had professions such as day-laborer, farmer or farm worker (*labrador*), or housewife or household craftsperson (*oficios de hogar*). I have found no mention, either in secondary literature or in the archival records, of an orphanage or foundling house in this region where mothers could leave an unwanted child. This was a hard life, particularly for women, and at times a mother with so few means chose to take her child's life.

<sup>2</sup> *Ibid.*, f32.

<sup>3</sup> Stephen Wilson, "Infanticide, Child Abandonment, and Female Honour in Nineteenth-Century Corsica," *Comparative Studies in Society and History* 30 (1988): 762.

Nonetheless, Venezuelan court records of this crime suddenly appear in numbers only after independence and only in this province. During the colonial period, we find almost no infanticide cases throughout Latin America.<sup>4</sup> For colonial Venezuela, this investigation finds only twelve infanticide cases; eleven in the last 25 years of colonial rule, with nine of them in the sparsely populated western provinces, including one case from Mérida.<sup>5</sup> During the early republic, we find no cases of infanticide in the country's north-central provinces, which encompassed approximately 51% of the country's population.<sup>6</sup> Republican Mérida province, however, with approximately 5% of the country's population, followed a different path.<sup>7</sup> In the two centuries of the province's colonial court records, there was only one case. Following full independence, however, Mérida province had approximately one case per year for three decades: thirty-three cases from 1830 to 1863. The archival records of all types of court cases virtually disappear after 1863, so it is not clear whether there were more cases after that date.

To make matters more confounding, court officials went to great lengths to ensure an acquittal, even in the face of damning evidence. Only those defendants who confessed received a conviction, whereas all twenty-eight defendants who denied the charges were acquitted. Five defendants confessed but, ironically, the courts still acquitted two of them. Although this was a capital crime, the punishment for the convicted was a few years of forced labor. Because it was for a capital offense, a conviction at the Provincial Court would be reviewed by the Superior Court, whose decision was then reviewed by the country's Supreme Court. In three of the five cases with a confession, the Provincial and/or the Superior Courts recommended the death penalty, as stipulated by law. However, the Supreme Court reduced the sentences to

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<sup>4</sup> We find a few cases of infanticide in colonial New Spain, Brazil, Nueva Granada, and the Caribbean, many of which deal with incidences of enslaved adults who killed enslaved children. We find no scholarship on this subject for colonial Argentina or Chile. Nora Jaffary, "Reconceiving Motherhood: Infanticide and Abortion in Colonial Mexico," *Journal of Family History* 37 (2012): 4–5; and Cassia Roth, "From Free Womb to Criminalized Woman: Fertility Control in Brazilian Slavery and Freedom," *Slavery and Abolition* 38 (2017): 270. See also Nora Jaffary, personal communication.

<sup>5</sup> There is one case from 1763 and eleven cases from 1796 to 1819. Three cases occurred in the more densely populated north-central provinces (modern states of Yaracuy, Caracas, and Monagas), while the majority were from the more sparsely populated western third of the country (modern states of Lara, Portuguesa, Falcón, Maracaibo, and Mérida). Data from the AGEM, Archivo de la Academia Nacional de Historia (hereafter AANH), Archivo General de la Nación (hereafter AGN), and Archivo Histórico del Estado Falcón (hereafter AHEF).

<sup>6</sup> Data from the AGN and AHEF. The AGN houses court records from the early republican provinces of Caracas and Carabobo (48% of the population), which correspond roughly to the contemporary states of the Distrito Capital, Guárico, Miranda, Vargas, Aragua, Cojedes, Carabobo. The AHEF houses records from the early republican province of Coro (3% of the population), which today corresponds to the state of Falcón. Population figures from the 1831 census are found in Antonio Arellano Moreno, *Las estadísticas de las provincias en la época de Páez* (Caracas: Academia Nacional de Historia, 1973), xxxiii.

<sup>7</sup> Population statistics are from Tomás Enrique Carrillo Batalla, *Cuentas nacionales de Venezuela, 1831–1873* (Caracas: Banco Central de Venezuela, 2001), 158–63.

2–8 years of unpaid service in a hospital, house, or *hacienda*. This pattern also appears elsewhere in Latin America; although lower-level courts at times recommended capital punishment for infanticide, superior courts opted for acquittal or non-capital sentences.<sup>8</sup> In María Zerpa's case, the judge acquitted the defendant but also made her pay court costs. Apparently, the judge considered her guilty of something and, rather than convict, imposed a mild punishment to teach her a lesson.

This article seeks to explain two elements related to these phenomena. First, how did women explain to court officials why they committed infanticide or abandoned their dead child? Research on Latin American infanticide from the late nineteenth century finds that defendants explained their behavior as an effort to preserve personal honor and gender norms. Surprisingly, although the culture of honor was also very powerful during the early republican period, in these court transcripts, the mothers virtually never mentioned honor or gender norms to explain why they committed these crimes. Although other people involved in these cases, such as witnesses and court officials, discussed the mother's honor, the defendants themselves did not. Rather, the mothers' testimony described self-preservation along with economic and emotional desperation as their main motivators.

Second, the investigation seeks to explain why the post-independence provincial justice system prosecuted these crimes, particularly given that the cases nearly always resulted in acquittal. There is no reason to assume that infanticide was a new phenomenon, or that these poor women behaved in a manner different from their colonial forebears. Rather, independence and the process of forming a new government catalyzed a change in the behavior of Mérida's judicial system with regard to this crime. This article argues that the judicial process (i.e., the stages of investigation and prosecution) served social and political goals that did not depend on conviction. Provincial officials partnered with civilians in the prosecution of infanticide cases as part of a larger project to build a polity that was both republican and patriarchal; that is, a polity that was rational, governed by law, self-improving, and based around public participation, and which also preserved male domination of political and domestic life. The process pursued these goals by seeking to "reform" poor, single women, by enabling these women to remain within their communities (rather than in prison), and by protecting men from having to take responsibility for the outcome of illicit sex. Within this state-building project, the courts orchestrated a ritual that helped civilians to uphold justice, legitimated the state, and maintained social order.

This research relies principally upon court cases from the AGEM, along with other official documents from the AGEM and the Biblioteca Febres Cordero

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<sup>8</sup> Nora Jaffary, "Maternity and Morality in Puebla's Nineteenth-Century Infanticide Trials," *Law and History Review* 39 (2021): 304; Nora Jaffary, "Medicine, Midwifery, and the Law: Views of Infanticide and Abortion in the Yucatán, 1840–1910," *Mexican Studies/Estudios Mexicanos* 37 (2021): 86–87. In a case from colonial Bogotá, the Corregidor recommended the death penalty, but the defense attorney recommended leniency, and it is not clear what the final judgement was. Guíomar Dueñas, "Infanticidio y aborto en la colonia," *Biopolítica y sexualidades* (1996–97): 45.

(BFC) in Mérida. In the AGEM, I located court cases scattered across three different collections: in Fondo Principales, two sections of Registros Principales (“Infanticidio” and “Heridas”), and in Fondo Gobernación, the section Inventario-Justicia. This crime has obvious religious implications and presumably could fall under the jurisdiction of the Catholic Church, which had a court system that operated parallel to that of the colonial and republican courts. Nonetheless, a review of court cases and communications from Mérida’s archdiocese uncovered no mention of reproductive or sexual issues, much less infanticide or abortion. Additionally, I focus only on those cases that involved the (attempted) killing of a newborn, immediately after the birth. In the AGEM catalog, there are forty-five cases labeled “Infanticidio,” but this article will not include cases about abortion, physical assault that induced a miscarriage, or killing a toddler or child. There were thirty-three cases of “newborn infanticide,” in every one of which the defendant was the mother of the child. It does not appear that the sex of the infant affected whether its mother tried to kill it: of these newborns, sixteen were male, ten were female, and in seven cases, the sex was unknown.<sup>9</sup>

### Scholarship, Sources, and Law

The establishment of republicanism and liberal systems throughout nineteenth-century Latin America reduced women’s legal rights and increased their repression. Republics across the region maintained colonial civil codes until they wrote their own codes, mostly in the 1850s through the 1880s. Colonial law and jurisprudence viewed women as morally flawed and mentally unqualified to exert authority over other people, and therefore maintained that they should not have power in public affairs. Single women and widows could manage their households and hold authority over their own children. However, women who lived under the protection of a patriarch—a father or husband—“should not” have control over their households without the patriarch’s permission. Scholarship on women in the early republican period finds that Latin American states became more attentive to, and more repressive of, women’s behavior, notably that of poor, single women. Republican state institutions, particularly those attached to the judicial system, took on the role of stern patriarch through the tradition of *patria potestad*, whereby patriarchs had legal authority over all members of their households, and could use violence to maintain order and provide moral instruction.<sup>10</sup>

<sup>9</sup> The infant’s sex was “unknown” because either the authorities did not note its sex or because the body was so decomposed or mangled by animals they could not tell.

<sup>10</sup> See Sarah Chambers, “‘To the Company of a Man Like My Husband, No Law Can Compel Me’: The Limits of Sanctions against Wife Beating in Arequipa, Peru, 1780–1850,” *Journal of Women’s History* 11 (1999): 34–35; Arlene Díaz, *Female Citizens, Patriarchs, and the Law in Venezuela, 1786–1904* (Lincoln, NE: University of Nebraska Press, 2004), 74; and Marianela Ponce, *De la soltería a la viudez: La condición jurídica de la mujer en la provincia de Venezuela en razón de su estado civil* (Caracas: Academia Nacional de la Historia, 1999).

*Honor, the Law, and Infanticide*

The subject of infanticide invariably touches on the culture of honor, as the act indicated that the mother had violated fundamental tenets of female honor connected to motherhood and sexual propriety. Scholarship on honor is voluminous, but briefly we can say that honor was akin to an unwritten set of laws, or the most powerful social norm in colonial and nineteenth-century Latin America. Honor assigned people their status within the social hierarchy and arose fundamentally from a person's reputation; your status and your worth derived from what people thought of you. In honor-based societies, the honor of the individual and of their social network (family and friends) were intertwined; the group's status affected each member's reputation, and each member's behavior affected the group's status. Honor was also intertwined with religion, as Latin American societies believed that the honor code came from God and was part of the natural order. Your honor was part of your relationship with God and connected to your soul and, therefore, many people valued their honor more than life itself. The individual acquired and lost honor through a combination of inherited features such as race, gender, and family status, as well as through personal behavior such as demonstrating honesty, courage, discipline, hospitality, and piety. The colonial and republican states protected honor, such that to hurt a person's honor was a criminal act. Whereas honor for men allowed a certain amount of sexual adventurism, women's honor was tied to restrained sexual behavior that occurred only within the confines of marriage. In addition, women's honor came from compliance with gender roles: the honorable woman should be submissive to men, dutiful to her parents and husband, and willing to sacrifice her needs to those of her family.<sup>11</sup>

In the eyes of Latin American law, the development of infanticide as a distinct crime connected to honor occurred after the time period studied in this article. Until the late nineteenth century, Spanish American law regarded killing a baby simply as a homicide rather than as a specific form of crime. Ancient Roman and medieval European law did not have the term "infanticide," or consider this act a distinct type of crime. Rather, baby killing was simply a variation of homicide or parricide (killing one's relatives). European law first classified this act as a distinct crime in the Early Modern period, when France (1532) and England (1624) defined "infanticide" as a crime committed by a woman who wanted to protect her honor.<sup>12</sup> In contrast, Spanish

<sup>11</sup> Sueann Caulfield, Sarah Chambers, and Lara Putnam, eds., *Honor, Status, and Law in Modern Latin America* (Durham, NC: Duke University Press, 2005); Díaz, *Female Citizens*; Lyman Johnson and Sonya Lipsett-Rivera, *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America* (Albuquerque, NM: University of New Mexico Press, 1998); Luis Felipe Pellicer, *La vivencia del honor en la provincia de Venezuela, 1774-1809* (Caracas, Venezuela: Fundación Polar, 1996); Elías Pino Iturrieta, *Contra lujuria, castidad: Historias de pecado en el siglo XIII venezolano* (Caracas, Venezuela: Alfadil Ediciones, 1992); Inés Quintero, ed., *Las mujeres de Venezuela: historia mínima* (Caracas: Funtrapet, 2003); and Kathryn Sloan, *Runaway Daughters: Seduction, Elopement, and Honor in Nineteenth-Century Mexico* (Albuquerque, NM: University of New Mexico Press, 2008).

<sup>12</sup> Sara McDougall, "Pardoning Infanticide in Late Medieval France," *Law and History Review* 39 (2021): 235; Felicity Turner, "The Contradictions of Reform: Prosecuting Infant Murder in Nineteenth-Century United States," *Law and History Review* 39 (2021): 280.

America continued to rely on the *Siete Partidas*, the medieval Castilian code that remained a legal foundation throughout the Hispanic world until the nineteenth century. The *Siete Partidas*, and therefore colonial Spanish American codes, categorized the killing of one's child as a form of parricide, and therefore a capital offense.<sup>13</sup> After independence in Spanish America, colonial laws remained in effect until the republics generated new legislation. Consequently, the colonial laws and practices regarding baby killing remained in place until the last decades of the century.

Our clearest description of infanticide during the early republican period comes from the legal dictionary published by Joaquin Escriche in 1838 in Spain, which had a wide influence throughout Spanish America. Escriche explained that infanticide cases rarely resulted in a conviction because, as a capital crime, the prosecution bore a high burden as it had to prove that the defendant was pregnant and gave birth, and that the child in question was hers; that the death was not caused by a difficult labor or some other natural cause; and that she violently assaulted the baby. Escriche pointed out that convictions of this crime were rare unless somebody witnessed the defendant during the act or she confessed, and that the majority of these cases ended in acquittal.<sup>14</sup> Still, the dictionary did not formulate Venezuelan legal practice, as several of the court cases in this study occurred before the publication of Escriche's dictionary in Caracas (1840), and only four of the cases referenced Escriche. Rather, Escriche's dictionary outlined an understanding of and standards for this crime that Venezuelan lawyers and judges already followed.

In the late nineteenth century, new legislation in Venezuela and other Spanish American countries treated infanticide as a particular crime and reduced the penalties if the mother, or her family, committed the act to preserve her honor. In other words, as had previously occurred in Europe, Latin American countries defined "infanticide" as the act of killing one's baby in order to preserve honor, and afforded it penalties considerably lighter than homicide. This legal change, for example in Mexico (1871) and Argentina (1887), was part of a larger political-legal movement throughout Latin America that increasingly codified honor into the legal system and also increased attention on women's honor and sexual behavior.<sup>15</sup> In Venezuela, the first legislative mention of infanticide and abortion occurred in extradition treaties with France and the United States in 1856 and 1861, respectively.<sup>16</sup> Venezuelan criminal statutes first mentioned these crimes in the 1873 penal

<sup>13</sup> See the *Siete Partidas*, Partida 7, Título 8, Ley 12. Jaffary, "Reconceiving Motherhood," 5.

<sup>14</sup> Joaquin Escriche, *Diccionario razonado de legislación civil, penal, comercial y forense* (Caracas, Venezuela: Valentin Espinal, 1840). "Infanticidio."

<sup>15</sup> Nora Jaffary, *Reproduction and its Discontents in Mexico: Childbirth and Contraception from 1750 to 1905* (Chapel Hill: University of North Carolina Press, 2016), 124; and Kristin Ruggiero, "Not Guilty: Abortion and Infanticide in Nineteenth-Century Argentina," in *Reconstructing Criminality in Latin America*, ed. Carlos Aguirre and Robert Buffington (Wilmington, DE: Scholarly Resources, 2000), 157. Brazil adopted this legal change in 1830, though did not prosecute those crimes until the 1870s. Roth, "From Free Womb."

<sup>16</sup> *Recopilación de leyes y decretos de Venezuela, Tomo III*, ed. Gobierno nacional de Venezuela (Caracas: Casa Editorial de "La Opinión Nacional," 1890), 30, No. 984 and *ibid.*, Tomo IV, 27, No. 1257.

code, which treated these crimes like homicide.<sup>17</sup> Venezuela's penal code first connected infanticide to honor in 1897: homicide received a punishment of 10–12 years of prison, but if the crime's victim was “a recently born child... with the object to hide personal dishonor or the dishonor of the wife, mother, descendent, sister, or adoptive daughter, the punishment will be 18 months to five years.”<sup>18</sup>

### *Historiography of Infanticide in the Long Nineteenth Century*

A survey of research on Latin American infanticide prior to the twentieth century reveals five prominent, interconnected trends. First, information about this crime comes almost entirely from court cases, as there are virtually no other sources that discuss infanticide. The exception is late nineteenth-century newspapers, which at times commented on the court cases. Second, there are very few primary sources (court cases) on the subject until the late nineteenth century. For example, research on the Mexican province of Sonora and on Brazil finds no criminal records for this crime until 1855 and after 1871, respectively.<sup>19</sup> Third, most scholarship on this subject concerns either the late colonial period or the late nineteenth century, with very little research on the transitional, early republican period.

Fourth, there is still debate among researchers over what motivated women to commit this crime. For instance, studies of the colonial period and the late nineteenth century (in Europe as well) found that poor women who lacked the resources to conceal an unwanted pregnancy might kill their newborn in order to protect their honor.<sup>20</sup> However, more recent research in Latin America sees the role of honor as far more ambivalent and describes a wider range of motives, in which these women feared loss of employment and housing.<sup>21</sup>

<sup>17</sup> Código de procedimiento criminal de 20 de febrero de 1873, Ley IV, Art 71-72. Found in *ibid.*, Tomo V, 1075. See also Ley II, Art. 363, in *ibid.*, 661; Ley VIII, Art 401, in *ibid.*, 665.

<sup>18</sup> Código penal promulgado en 14 de mayo de 1897, Título IX, Capítulo I (Del homicidio), Art. 376. Found in *ibid.*, Tomo XX, 259.

<sup>19</sup> Roth, “From Free Womb”; Laura Shelton, “Bodies of Evidence: Honor, Prueba Plena, and Emerging Medical Discourses in Northern Mexico's Infanticide Trials in the Late Nineteenth and Early Twentieth Centuries,” *The Americas* 74 (2017): 464.

<sup>20</sup> Laura Alejandra Buenaventura Gómez, *Malas amistades: Infanticidios y relaciones ilícitas en la provincia de Antioquia (Nueva Granada) 1765-1803* (Bogotá: Editorial Universidad de Rosario, 2017); Dueñas, “Infanticidio y aborto”; Jaffary, “Reconceiving Motherhood”; Lyman Johnson and Sonya Lipsett-Rivera, “Introduction,” in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, ed. Lyman Johnson and Sonya Lipsett-Rivera (Albuquerque, NM: University of New Mexico Press, 1998), 3–5; Sonya Lipsett-Rivera, “A Slap in the Face of Honor: Social Transgression and Women in Late-Colonial Mexico,” in *The Faces of Honor: Sex, Shame, and Violence in Colonial Latin America*, ed. Lyman Johnson and Sonya Lipsett-Rivera (Albuquerque, NM: University of New Mexico Press, 1998), 192–94; Kristin Ruggiero, “Honor, Maternity, and the Disciplining of Women: Infanticide in Late Nineteenth-Century Buenos Aires,” *Hispanic American Historical Review* 72 (1992): 353–73; and Ruggiero, “Not Guilty.” On Europe, see Ann Higginbotham, “Sin of the Age: Infanticide and Illegitimacy in Victorian London,” *Victorian Studies* 32 (1989): 321; and Wilson, “Infanticide, Child Abandonment, and Female Honour,” 763–64.

<sup>21</sup> David Carey, *I Ask for Justice: Maya Women, Dictators, and Crime in Guatemala, 1898–1944* (Austin, TX: University of Texas Press, 2013), 135–36; Jaffary, *Reproduction and its Discontents*, ch. 4; Shelton, “Bodies of Evidence.”



Fifth, the prosecution of this crime across the long nineteenth century was closely connected to larger projects of state and nation building. For instance, a surge of instances in which enslaved adults in late colonial Nueva Granada (modern Colombia) killed enslaved children (usually the children of other adults) correlated to metropolitan efforts to centralize the state's control over slavery and mining.<sup>22</sup> In the late nineteenth century, the increased prosecution of the crime in Brazil, Mexico, and Argentina related to a reconceptualization of the public-private divide within the liberal state as well as the increased surveillance and repression of women's sexuality as part of an effort to build a moral national identity and a modern state.<sup>23</sup>

This collection of cases from Mérida Province, Venezuela is surprisingly large given the population, and offers a rare opportunity to study this phenomenon during the transitional decades of the early republic. Research in Argentina, Sonora (Mexico), and Brazil has found there were no cases prior to the second half of the century. Early republican Mexico City and Oaxaca City combined had eighteen cases, at a time when Mexico City alone had a population of 160,000–200,000.<sup>24</sup> Early republican Mérida province had a far higher number of cases (thirty-three) even though its population was much smaller (55,000 in 1839 and 42,000 in 1856).<sup>25</sup> Mérida's mid-century case numbers are closer to those of the Mexican provinces of Puebla and Yucatán, which had thirty and twenty-seven cases, respectively.<sup>26</sup> Exploring why certain provinces (i.e., Mérida, Puebla, and Yucatán) had such an outsized number of cases relative the rest of early republican Latin America is beyond the scope of this article.

Only a small handful of studies on infanticide consider the transitional decades after independence. Nora Jaffary's book and two recent articles on

<sup>22</sup> Marcela Echeverri, "Enraged to the limit of despair': Infanticide and Slave Judicial Strategies in Barbacoas, 1788–98," *Slavery and Abolition* 30 (2009): 403–26; Marta Herrera Ángel, "En un rincón de ese imperio en que no se ocultaba el sol: Colonialismo, oro y terror en Barbacoas, siglo VIII," *Anuario colombiano de historia social y de la cultura* 32 (2005): 31–49; Renée Soulodre-La France, "Por el amor! Child Killing in Colonial Nueva Granada," *Slavery and Abolition* 23 (2002): 87–100; and Jessica Spicker, "El cuerpo femenino en cautiverio: aborto e infanticidio entre las esclavas de la Nueva Granada 1750–1810," in *Geografía Humana de Colombia. Los Afrocolombianos*, ed. Luz Adriana Maya Restrepo (Bogotá: Instituto Colombiano de Cultura Hispánica, 1998).

<sup>23</sup> Jaffary, "Reconceiving Motherhood"; Jaffary, *Reproduction and its Discontents*, ch. 4; Roth, "From Free Womb"; and Ruggiero, "Not Guilty." We see a similar phenomenon in New York City, where middle class activists sought to "reform" the poor in order to improve and modernize the city. Christine Stansell, "Women, Children, and the Uses of the Streets: Class and Gender Conflicts in New York City, 1850–1860," in *Unequal Sisters: A Multicultural Reader in US Women's History*, ed. Ellen Carol DuBois and Vicki Ruiz (New York: Routledge, 1994).

<sup>24</sup> Infanticide numbers from Jaffary, *Reproduction and its Discontents*, 107. Population numbers from Victor Uribe-Uran, "Physical Violence Against Wives and the Law in the Spanish American World, 1820s–2000s," in *Murder and Violence in Modern Latin America*, ed. Ricardo Salvatore, Pieter Spierenburg, and Eric Johnson (London: Blackwell-Wiley, 2013), 53.

<sup>25</sup> Carrillo Batalla, *Cuentas nacionales*, 158–63.

<sup>26</sup> Jaffary, "Maternity and Morality"; Jaffary, "Medicine, Midwifery."

reproduction in Mexico during the long nineteenth century provide our most notable scholarship on the early republican period.<sup>27</sup> Mexico had significant regional differences, as Puebla and Yucatán had a comparatively higher number of infanticide cases and also much higher conviction rates than Mexico City and Oaxaca City. For Puebla and Yucatán, Jaffary finds strong evidence to consider these reproductive crimes to be honor crimes, in line with what Kristin Ruggiero found for late nineteenth-century Buenos Aires. The preservation of honor and of female gender norms motivated the mothers to kill the fetus/baby, and also justified their actions in the eyes of the community and the court officials. Like Ruggiero, Jaffary asserts that the preservation of public honor was more important to the mothers and the courts than the imperative to protect the fetus/baby.<sup>28</sup>

In addition, there are only a couple of other articles on this period. An article on mid-century child abuse in Concepción, Chile discussed two court cases and a newspaper story about accusations of infanticide.<sup>29</sup> Jhoana Prada looks at a subset of the same infanticide court cases from Mérida as I do, and provides an extensive discussion of the legal procedures and the geographic distribution of the cases.<sup>30</sup> However, Prada examines cases from a shorter time frame (1811–51) than this study (1811–63). More significantly, Prada applies her analysis almost exclusively through the lens of honor; she relies on laws from late nineteenth-century Argentina, which defined infanticide as an honor crime, to analyze cases from early republican Venezuela. In contrast, this article finds that in the court records, the mothers did not discuss honor and that therefore the role of honor is highly ambiguous.

This article contributes to our knowledge of infanticide and of the early republican period in a number of ways. This investigation seeks to resolve the seeming paradox of why the judiciary prosecuted these cases when an acquittal was all but assured, and connects the judicial process to the provincial government's larger state-building project. Further, this investigation finds significant differences from scholarship on the late nineteenth century; there is so much more scholarship on this latter period that it can distort our interpretations of earlier periods.<sup>31</sup> For instance, by the end of the century the laws had changed to classify infanticide as an honor crime with lower penalties than homicide. Further, authorities were motivated to prosecute the crime because they saw regulating women's sexuality and motherhood as essential to creating a modern, civilized republic. Accordingly, scholarship finds that

<sup>27</sup> Jaffary, *Reproduction and its Discontents*, ch 4; Jaffary, "Maternity and Morality"; and Jaffary, "Medicine, Midwifery."

<sup>28</sup> Ruggiero, "Honor, Maternity," 371–72.

<sup>29</sup> Pamela FernándezNavas, "Madres desnaturalizadas o socialización de la violencia? Abandono, maltrato e infanticidio en Concepción, 1840-1870," *Revista Historia Universidad de Chile* 1 (2012): 125–28.

<sup>30</sup> Jhoana Gregorias Prada Merchán, "Un crimen por honor: El infanticidio en Mérida, 1811-1851," in *Honor, Sexualidad y Transgresión en Mérida, Siglos XVIII-XIX* (Cabimas, Venezuela: Universidad Nacional Experimental Rafael María Baralt, 2016).

<sup>31</sup> Sara McDougall eloquently describes this pitfall in her explanation of how scholarship on medieval European infanticide over-relies on scholarship from the Early Modern period. McDougall, "Pardoning Infanticide in Late Medieval France," 237.

late nineteenth century defendants said that they were motivated principally to protect their personal honor. Judges were motivated to acquit because they saw the mother as a victim of a male seducer, insane, or “unnatural” or “unhygienic.”

In contrast, in these earlier cases from Mérida, authorities did not bring up those concerns, and defendants did not discuss personal honor or shame. We should, therefore, be careful not to allow our understanding of Latin America’s late nineteenth century, with its stable, authoritarian states and pursuit of “modern” progress through economic integration with the industrialized north, to guide our understanding of the century’s early and middle decades, with regimes that were comparatively less stable and closer to the colonial system. This article offers alternative explanations for the testimony of defendants and the motivations of judicial officers, which help to characterize more broadly the much under-studied early republican period.

## Some General Patterns

### *Mérida province and the defendants*

Mérida Province lies in the Andean region of western Venezuela. Farming was the main economic sector, and at the beginning of the century the principal export crops were cacao, coffee, indigo, tobacco, and quina (cinchona). After 1860, the coffee that grew in the Andean region became the main economic driver for the entire country until it was eventually replaced by petroleum in the 1910s through the 1920s.<sup>32</sup> The population of the Andean region was more equitable in terms of race/ethnicity than in most of Venezuela: Whereas for the country as a whole, the *pardos* (free blacks) comprised roughly 45% of the population, in the Andean region whites, indigenous, mestizo, and *pardos* each comprised close to 25% of the population, and slaves made up less than 5% of the population (data from 1820).<sup>33</sup>

In terms of demographic trends for the defendants in these cases, we can make some generalizations about their economic status, profession, and age, although not about their ethnicity/race. All of the defendants were poor and illiterate, and they worked at manual labor jobs typical for poor women such as cook, seamstress, domestic servant, maid, farm worker, day-laborer, and laundress. The defendants’ age was somewhat unclear, as many of them did not know their age and court officials simply guessed an age range (e.g., “older than 20” or “28 to 30”). Out of the thirty-three cases, twenty-nine defendants knew or were assigned an age. They ranged from 15 to 30 years old; nine were 15–19 years old, eight were 20–24 years old, and twelve were 25–30 years old. After independence, the government abolished race as a legal category, and therefore court records rarely noted the defendant’s ethnic/racial

<sup>32</sup> F. Eduardo Osorio, *Los Andes Venezolanos: Proceso social y estructura demográfica (1800-1873)* (Mérida, Venezuela: Universidad de los Andes, 1996), 76–78.

<sup>33</sup> Pedro Cunill Grau, *Geografía del poblamiento venezolano en el siglo XIX* (Caracas: Ediciones de la Presidencia de la República, 1987), 43–44; and Osorio, *Los Andes Venezolanos*, 152.

background. Such information appears only sporadically, sometimes from witness testimony. Of the thirty-three defendants, the documents identify six as Indian, one as black, one as white, one as mestiza, and twenty-four as unknown.

### *Incidence and procedure*

We can be confident that infanticide occurred consistently throughout all of Venezuela, including during the colonial years, despite the lack of official records. Although there are almost no records of this crime in colonial Mexico and pre-emancipation Brazil (pre-1888), scholars find that infanticide likely occurred there at rates comparable to those found in early modern Europe, where there are far more court records.<sup>34</sup> In the Mérida court transcripts, we find evidence that infanticide occurred far more frequently than the court cases alone indicate. The River Albarregas, which runs through the city of Mérida, was apparently a known location where people deposited the bodies of their dead fetuses and newborns. In a case from 1837, Andrés Rodríguez stood accused of having compelled his girlfriend to abort her pregnancy. He denied the charges and instead claimed that he had merely mentioned to her “that you can’t drink from the Albarregas River as it is so contaminated, because the women of Mérida drink [tea from] the mucutena [tree] and lye in order to abort their babies, and they throw the babies in the river, and he has found the head of a baby on the path to Pedregosa ...”<sup>35</sup> In 1843, an enslaved boy, while cleaning a sheep skin in the Albarregas River, found the body of a baby floating in the water. When the Jefe Político sent the documentation of his initial investigation to the court of first instance, he began the memo saying, “Find here a case of a common crime [*un delito común*], that being infanticide...”<sup>36</sup> The previous court case for infanticide occurred 4 years earlier, in 1839, indicating that the crime was more common than the records on their own indicate.

Among instances that catalyzed a court investigation, various studies have recognized patterns regarding the crime and the legal process. The defendants were poor, illiterate, and single women who often sought to hide their pregnancies and gave birth in seclusion.<sup>37</sup> In an urban setting, where the defendants worked as domestic servants, the most common place for a secret birth was the water closet.<sup>38</sup> In a close-knit farming community, the mother might hide in an agricultural field, a latrine, or a pig pen.<sup>39</sup> In the cases for this study, where women lived in small rural towns, they often went into an

<sup>34</sup> Jaffary, “Reconceiving Motherhood,” 4–5; Roth, “From Free Womb,” 270.

<sup>35</sup> AGEM, RP, 1837, Causas Diversas, Tomo III, Fols: 208–213. “Expediente contra Andrés Rodríguez...” Quote from f211.

<sup>36</sup> AGEM, RP, 1843, Infanticidio, Tomo I, Fols. 147–155. “Averiguación sobre un infanticidio...” Quote from f154v.

<sup>37</sup> Jaffary, *Reproduction and its Discontents*; Katie Hemphill, “‘Driven to the Commission of This Crime’: Women and Infanticide in Baltimore, 1835–1860,” *Journal of the Early Republic* 32 (2012): 437–61; Roth, “From Free Womb”; Ruggiero, “Honor, Maternity”; and Shelton, “Bodies of Evidence.”

<sup>38</sup> Ruggiero, “Honor, Maternity,” 358.

<sup>39</sup> Shelton, “Bodies of Evidence,” 469.

agricultural field or walked far away from the village to give birth in the woods or up the mountain. Despite the obvious religious implications of this crime, even in colonial Latin America and colonial New England these cases were tried in secular courts, and religious organizations were not involved in the investigation or prosecution.<sup>40</sup>

The judicial procedure (i.e., the investigation and prosecution) fit a standard pattern, which we see elsewhere in Latin America. Typically, *vecinos* (locals, members of a neighborhood) spotted a cadaver because it was being eaten by vultures, cowbirds, dogs, or pigs in the countryside or a river. They reported the cadaver to the authorities, such as a *juez de paz* or *alcalde*. Officials viewed the body, interviewed all the people who had found it, and asked about evidence of bruising or physical trauma. When officials asked about women in the area who had been pregnant but suddenly were not, in most cases *vecinos* pointed to a particular woman and provided testimony as to whether she had hidden or publicized her pregnancy, the events that had occurred before and after labor, and whether the mother's words or conduct demonstrated guilt. Officials then arrested the suspect and noted any incriminating evidence, such as blood-stained petticoats or a blouse with milk stains around the chest, whereupon suspects tended to admit that the baby was theirs but insisted that it had been stillborn. Officials would then assign a defense attorney and a prosecutor as well as midwives or physicians to examine the defendant and confirm whether she had recently given birth. The court might also ask the physicians to determine the cause of death, which could trigger an autopsy. However, often this request came weeks after the investigation began and the advanced state of decay precluded an autopsy. Meanwhile, the attorneys would take testimony from all the witnesses and the defendant and, eventually, submit their recommendations to the judge, who would make a final determination or request further information.<sup>41</sup>

### *High acquittal rates*

Because the courts convicted only those defendants who confessed, acquittal rates for infanticide in early republican Mérida were high. Of the thirty-three newborn infanticide cases in Mérida, seven cases ended prematurely without a judge's decision while twenty-six ended with a judicial decision. Of those twenty-six, there were twenty-three acquittals (88%) and three convictions (12%). In the five cases in which the defendant confessed, the lower courts always convicted. However, in two of those cases a higher court overturned

<sup>40</sup> Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *The William and Mary Quarterly* 48 (1991): 42; and Jaffary, *Reproduction and its Discontents*, 14. See also Shelton, "Bodies of Evidence"; and Ruggiero, "Not Guilty."

<sup>41</sup> For more on procedure in these cases, particularly with regard to the use of medical personnel, see Prada Merchán, "Un crimen," 304–6. We see similar legal steps in other countries; see Jaffary, *Reproduction and its Discontents*; Ruggiero, "Honor, Maternity"; and Shelton, "Bodies of Evidence."

the conviction, leaving just three convicted defendants.<sup>42</sup> These courts apparently were highly motivated to acquit when possible, and clearly saw a greater good in returning these women to their families, jobs, and society. These figures coincide with the acquittal rate (85%) that Jaffary found for early republican Mexico City and Oaxaca City.<sup>43</sup> On the other hand, conviction rates could be higher in other parts of Mexico at this time and were generally higher by the end of the century. Mid-century conviction rates in the Mexican states of Yucatán and Puebla were much higher (72% and 80%, respectively).<sup>44</sup> By the late nineteenth century, acquittal rates in Mexico City and Oaxaca City dropped to 50%, and in Argentina they were 20%.<sup>45</sup>

This investigation finds several reasons for the high acquittal rates in Mérida. The most obvious reason for acquittal was the technical-legal hurdles that the prosecution faced. As mentioned earlier, the legal dictionary of Joaquín Escriche (1838) explained that courts rarely convicted mothers of this crime because the defendant usually had given birth alone and in seclusion, with no witnesses.<sup>46</sup> In an era before solid forensic evidence, prosecutors faced a serious challenge to prove who was the infant's mother, whether the infant had died through natural or induced causes, and whether the mother was the perpetrator. In addition, the Hispanic justice system had a long tradition of treating vulnerable groups in society (e.g., poor, single women) with mercy and benevolence. Colonial courts served not only as organs to mete out convictions and punishments, but also as places to mediate communal problems, resolve disputes, and enforce local customs and notions of justice. Courts could achieve these ends through the medieval juridical doctrine of *arbitrio judicial* (juridical discretion), by which magistrates could alter proscribed sentences in order to achieve *equidad* (equity). By aiming for *equidad* rather than strict adherence to legal codes, the courts sought a resolution that more closely fit the circumstances of the case, a moral sense of justice, and local customs, all in order to achieve social order and the common good.<sup>47</sup>

Under certain circumstances, colonial juridical standards remained in place through the early republican years. Soon after independence, the Venezuelan justice system instituted a number of changes to bring court procedures in line with modern standards, such as stricter adherence to legal codes, due process, and empirical evidence. However, in those cases in which the defendant

<sup>42</sup> Cases in which a lower court convicted but a higher court acquitted: AGEM, RP, 1849, *Infanticidio*, Tomo II, Fols: 35–70. “Expediente contra María Eusebia Sánchez Peña...”; AGEM, RP, 1859, *Infanticidio*, Tomo III, Fols: 216–256. “Expediente contra Felipa Avendaño...”

<sup>43</sup> Jaffary, *Reproduction and its Discontents*, 107.

<sup>44</sup> Jaffary, “Maternity and Morality,” 312; and Jaffary, “Medicine, Midwifery,” 87.

<sup>45</sup> Jaffary, *Reproduction and its Discontents*, 106–7; and Ruggiero, “Honor, Maternity,” 356. In Sonora, acquittal rates were higher (67%) for women who organized their defense around a medical explanation than for women who built their defense around honor (18%). Shelton, “Bodies of Evidence,” 467.

<sup>46</sup> See Escriche, *Diccionario razonado*, “Infanticidio.” See also Ruggiero, “Not Guilty,” 158–59.

<sup>47</sup> Díaz, *Female Citizens*, 73; and Michael Scardaville, “Justice by Paperwork: A Day in the Life of a Court Scribe in Bourbon Mexico City,” *Journal of Social History* 36 (2003): 989. Specific to colonial infanticide cases, see Echeverri, “Enraged,” 413; and Jaffary, “Reconceiving Motherhood,” 13.

challenged patriarchal gender norms, such as male vagabonds or women who sought alimony, the courts retained colonial standards.<sup>48</sup> Similarly, colonial juridical standards remained in place in infanticide cases, for which the early republic had no specific statutes and judges appeared to seek resolutions based on *equidad* rather than prescribed punishments. In Mérida, the three convicted defendants did not receive the death penalty but rather were sentenced to 2–8 years of unpaid labor. In a case from 1830, the prosecutor accepted the defendant's story that her baby was stillborn and that she hid the body out of fear that her mother would punish her. The prosecutor declined to charge her with infanticide and instead sought to protect her from being punished by her mother in order to achieve what he called "true justice." He requested "that the tribunal free her into an honorable house, so that she will be spared the punishments that she will suffer from her mother whom she feared so much..." In the end, by the defendant's request, the court assigned her to live in the prosecutor's house.<sup>49</sup>

Another reason for the high acquittal rates was the quotidian nature of infant deaths. At the time, deaths of infants and children were far more common than they are in modern societies—perhaps a quarter to half of all newborns lived past their first year—and did not necessarily indicate foul play.<sup>50</sup> Additionally, it is also possible that the court officials acquitted because they did not place much value on the loss of the illegitimate children of illiterate, poor mothers. In both North and Latin America of the nineteenth century, the courts were more concerned with preserving a mother's honor or her capacity for work than with the death of an illegitimate child.<sup>51</sup>

How the outcome of these cases was distinct from that of other crimes requires further research. This article is part of larger project on women who perpetrated violent crime during the early republican years, which hopefully will be able to provide a robust comparison. One preliminary observation is that among female defendants who claimed innocence, conviction occurred more frequently when the charge was homicide or assault than when it was infanticide.

## How People Explained the Crime

This article will now explore how defendants and others explained the mother's actions in court documents. This section seeks to understand the broader context for this crime and the community's response, but does not make concrete arguments about the mother's actual motives. As we shall see, the court documents provide considerable information about the social, economic, and legal context of these tragedies, but offer only a murky lens through which to understand the defendants' internal decisions. The case files provide

<sup>48</sup> Reuben Zahler, *Ambitious Rebels: Remaking Honor, Law, and Liberalism in Venezuela, 1780–1850* (Tucson, AZ: University of Arizona Press, 2013), 68–70, 170–74.

<sup>49</sup> AGEM, RP, 1830, Heridas, Tomo VI, Fols: 178–183. "Expediente contra Maria de Jesús Ortega..." Quote from f183.

<sup>50</sup> Jaffary, *Reproduction and its Discontents*, 12–13; and Shelton, "Bodies of Evidence," 462.

<sup>51</sup> Jaffary, "Reconceiving Motherhood," 11; Ian Pilarczyk, "'So Foul a Deed': Infanticide in Montreal, 1825–1850," *Law and History Review* 30 (2012): 633–34; Roth, "From Free Womb," 271–73; and Ruggiero, "Honor, Maternity," 371.

minimal information about their motivations, as the defendants discussed their reasons only briefly, if at all. Sometimes the investigators did not even ask the accused to explain her actions. What we gather comes to us through male structures, through an investigation and trial in which men decided what questions to ask and what answers to record. The women had survived a huge trauma, an overwhelming flood of emotional and physical pain, and then endured an interrogation by male authorities. We learn very little about the internal experience of an illiterate woman who did not leave her own record but rather provided testimony under difficult circumstances.

Further, when considering motivations, we should resist the temptation to explain the mothers' emotional state and plans in simple categories. In an examination of early modern English-Welsh infanticide, historian Garthine Walker asserts that a mother's emotions and motivations not only could be complex but also might change from moment to moment. We should not, therefore, explain their actions using simplistic motivational categories, such as assuming that the mothers were either victims who submitted to patriarchal expectations or, on the contrary, that they rebelled against gender norms. Scholars should neither assume that the mothers were "purposeful, goal-oriented agents," nor that their efforts at concealment were "calculated or even fully conscious acts."<sup>52</sup> The documents from Mérida provide a picture of women who were emotionally overwhelmed and may not have been fully aware of why they committed these deeds.

In their testimonies, the defendants explained that they hid the pregnancy and/or birth due to emotional trauma and isolation, economic hardship, and the threat of physical violence. Fourteen of the defendants (42%) explained they were secretive because their parents had threatened to beat or kill them if they became pregnant. In two cases, the defendant wanted to hide the baby from her employer, presumably for fear that she would lose her job.<sup>53</sup> Most defendants asserted that the baby was stillborn or had died naturally moments after birth, and that any bruising on its body occurred in utero, due to the mother having a seizure or falling down, or directly after birth, due to an accident. Finally, some women said that, after giving birth, they were too delirious or exhausted to carry the body back home.

### *What the Defendants Said*

#### *Emotional and economic desperation*

From the defendants' testimonies emerge stories of emotional pain, isolation, and pressure, as well as economic misery. Several of the defendants worked as laborers or servants in others' houses and thus might have been motivated to hide the pregnancy and birth for fear of getting fired.<sup>54</sup> Although childbearing

<sup>52</sup> Garthine Walker, "Child-Killing and Emotion in Early Modern England and Wales," in *Death, Emotion and Childhood in Premodern Europe*, ed. Katie Barclay, Kimberley Reynolds, and Ciara Rawnsley (London: Palgrave Macmillan UK, 2016), 162–63.

<sup>53</sup> AGEM, RP, 1857, Infanticidio, Tomo III, Fols: 105–143. "Expediente contra Maria de Jesús Carrero"; AGEM, InvJ, 1863, 7.2 Juzgado de Primera Instancia de La Provincia De Merida. 263/15 (I). "Expediente sobre infanticidio en la parroquia Chiguará."

<sup>54</sup> Jaffary, "Reconceiving Motherhood," 16; and Ruggiero, "Honor, Maternity," 366–67.



is physically dangerous, these women managed the pregnancy and the delivery alone. Several women reported that the labor was so painful that they passed out or became delirious and therefore did not know what happened when the baby arrived. The most common reason women gave for abandoning the body was fear of their parents, which points to an emotionally crushing isolation. Striking a familiar tone, research on infanticide in early modern France describes the mothers' emotional state in terms of intense sadness, shock, or, as one surgeon in 1724 described a mother, "overwhelmed and sick."<sup>55</sup>

Court records offer clues about the defendants' economic plight but do not discuss the toll those pressures took or the difficulties that these women would face when raising a child. All of the defendants were single, many lived alone, and several mentioned that they already had other children to support. They were all illiterate and twenty-one of them did not know their age, which indicates the distance between their daily lives and middle-class resources or bureaucratic infrastructures. In one example from 1856, Maria Ana Peña was an 18–20-year old day laborer going house to house looking for work, accompanied by a 13-year-old female friend. A farmer employed them to pick corn for a day, an arrangement that included dinner and a place to sleep for the night. That night, Peña slipped out of the farmhouse, gave birth, and buried the child alive.<sup>56</sup> Aside from their food insecurity, one can only imagine how physically and sexually vulnerable she and her friend were. In another example, Gregoria Ibarra, age 18, worked as a cook. She testified that, when she went into labor, she stepped outside the house and gave birth to a stillborn in some bushes near the kitchen. While giving birth, she could hear her employer calling to her for food. Therefore, as soon as she could stand, she returned to attending to her employer's table. She later threw the cadaver near the town reservoir out of fear of her employer.<sup>57</sup> Attorneys or judges at times discussed how the defendants were unfortunate or deserving of mercy. At the same time, they expected the defendants to embrace middle-class values of motherhood even when they lacked middle-class resources.<sup>58</sup>

The five women who confessed to killing their babies also explained their action in terms of being emotionally overwhelmed, describing fear, confusion, emotional pain, and a desire to hide the pregnancy. All five of these defendants stated that they were afraid of their parents or of a guardian figure. Two said they suffered from mental illness. In 1845, Soledad Rojas said that she brutalized her newborn boy and then buried him alive "because she was afraid of her mother Gabriela Rojas and she sliced open the mouth of her son Pablo Ignacio so that he couldn't nurse, she did this because she is crazy [*por su mala cabeza*]..."<sup>59</sup> Maria Eusebia

<sup>55</sup> Julie Hardwick, "Dead Babies in Boxes: Dealing with the Consequences of Interrupted Reproduction," in *Nursing Clio* (2020). <https://nursingclio.org/2020/09/10/dead-babies-in-boxes-dealing-with-the-consequences-of-interrupted-reproduction/>.

<sup>56</sup> AGEM, RP, 1856, Infanticidio, Tomo III, Fols: 36–71. "Expediente contra Maria Ana Peña..."

<sup>57</sup> AGEM, InvJ, 1863, 7.2 Juzgado de Primera Instancia de La Provincia De Merida. 263/15 (I). "Expediente sobre infanticidio en la parroquia Chiguará."

<sup>58</sup> Hemphill, "Driven to the Commission"; and Ruggiero, "Honor, Maternity," 365.

<sup>59</sup> AGEM, RP, 1845, Infanticidio, Tomo I, Fols: 184–225. "Expediente contra Soledad Rojas..." Quote from f190v.

Sánchez Peña (1849) said that she killed her baby with her bare hands because she was afraid of her father and also because she was crazy [*por su mala cabeza*].<sup>60</sup> María Alonsa Díaz (1835) confessed that she beat her newborn boy to death because she already had a baby out of wedlock and her mother threatened to kill her if she had another. She did not claim insanity, but rather managed her emotions through drinking. In the days leading up to the birth, neighbors observed that Díaz attended parties and drank a lot of *chicha*.<sup>61</sup> Maria Ana Peña (1856), mentioned in the previous paragraph, dryly explained that she beat her baby boy and buried him alive so that nobody would know about him. Notably, defendants who said that the child was stillborn described emotional and economic conditions similar to those who confessed to infanticide.

### *Sending a message to the father*

At times, the mother acted against the baby in order to communicate with the father. On June 10, 1851, Juan Bautista Montilla and his wife awoke to the sound of a crying baby and found that somebody had thrown a newborn girl over the property wall into their backyard. The couple attempted to save the girl, but she died later that day. Juan went over to the boarding house that shared the wall with his property. In front of several witnesses, he held a sword against one of the boarders, Natividad Pino, and demanded that she confess that the child was hers. Natividad confessed to Juan and, after she was arrested, confessed again to the authorities.<sup>62</sup> Natividad had moved into the house just 2 weeks earlier and the other boarders said they did not know that she was pregnant. Juan did not confront the other two adult female boarders, only Natividad. One must wonder how Juan knew that Natividad was the mother. As was typical in these cases, the authorities never attempted to identify the father. Nonetheless, it seems likely that Juan was the father, that Natividad had moved into the boarding house to be near him, and that she threw the baby over his wall in order to send a message. In another case, in 1857, María Pilar Palma abandoned her newborn girl in a sugarcane field. Her two sisters found and saved the child, and later a neighbor denounced Pilar to the authorities. When interrogated, Pilar explained that she was a widow with three children and worked as a seamstress. She said that the father refused to support the child and that she exposed the girl not with intent to kill her, but rather in the hopes that somebody else would find and care for her. She also hoped that the father would hear about what had happened and would step forward to help care for the child.<sup>63</sup>

These cases demonstrate that mothers may have taken these steps as a form of resistance to their oppressed status. Research indicates that enslaved mothers occasionally committed infanticide as an act of agency or resistance to their circumstances. Enslaved women lived under constant threat of sexual

<sup>60</sup> AGEM, RP, 1849, Infanticidio, Tomo II, Fols: 35–70. “Expediente contra Maria Eusebia Sánchez Peña...”

<sup>61</sup> *Chicha* is a corn-based alcoholic drink. AGEM, RP, 1835, Infanticidio, Tomo I, Fols: 51–86. “Expediente contra Maria Alonsa Díaz...” Quote from f58.

<sup>62</sup> AGEM, RP, 1851, Infanticidio, Tomo II, Fols: 133–175. “Expediente contra Natividad Pino...”

<sup>63</sup> AGEM, RP, 1857, Infanticidio, Tomo III, Fols: 144–159. “Expediente contra Maria Pilar Palma...”

violence and did not want to become mothers under those conditions. Enslaved people also might kill their child, or the child of another slave, to protect it from an onerous life or as revenge against their masters.<sup>64</sup> The women in this study were technically free but still were highly vulnerable to sexual violence. Even if the sexual act had been consensual, the lack of support from the father may have induced the mother to harm the infant.

### *Honor, or Not*

While we would expect the defendants to discuss economic and emotional hardship, it is a surprise that they virtually never discussed their honor. The defendants' silence about honor is curious and marks a clear contrast with the testimony from the late nineteenth century, when infanticide defendants typically testified that they had wanted to protect their honor and conform to feminine norms of chastity and modesty. In this data set, however, only two defendants discussed their honor/shame: they both claimed the child was stillborn and that they hid the body in order to protect honor. One explained that she hid her pregnancy/birth "because it caused her shame with her father..."<sup>65</sup> and the other claimed that she did this "out of shame towards her señora (employer)..."<sup>66</sup> It may be significant that these two cases occurred late in the data set, both in the mid-1850s. Perhaps by that time there had been a shift in how court officials gathered the defendants' testimony. In the other thirty-one cases, the defendants' testimony about why they hid the pregnancy and birth made no mention of honor or feminine norms.

The defendants could have discussed honor in a court setting, and we would expect them to have done so. Protecting reputation and honor would seem an obvious reason to hide the baby. Neighbors and authorities charged these defendants with a crime that violated fundamental gender norms attached to feminine honor such as chastity and selfless dedication to family. In other court cases that related to honor (e.g., verbal insults, alimony, domestic violence), women talked at length about their personal honor.<sup>67</sup> In most of these infanticide cases (twenty-two out of thirty-three), witnesses and/or officials discussed the defendant's honor and the importance of upholding feminine norms. For instance, even when the defendant's testimony did not mention shame, at times witnesses stated that in private the defendant had "confessed the disgrace of having been pregnant..."<sup>68</sup> The family and neighbors came from the same socioeconomic strata as the mothers, so clearly low status

<sup>64</sup> Roth, "From Free Womb"; and Spicker "El cuerpo."

<sup>65</sup> AGEM, RP, 1854, Infanticidio, Tomo II, Fols: 233–287. "porque le causo vergüenza con su padre..." f248v.

<sup>66</sup> AGEM, RP, 1857, Infanticidio, Tomo III, Fols: 105–143. "porque le tuvo mucha vergüenza a su señora..." f110v.

<sup>67</sup> See Zahler, *Ambitious Rebels*, ch. 6.

<sup>68</sup> AGEM, RP, 1846, Infanticidio, Tomo I, Fols: 245–265. "Expediente contra Teresa Salas..." Quote from f257v. See also AGEM, RP, 1854, Infanticidio, Tomo II, Fols: 233–287. "Expediente contra Maria Luisa Rondón..." f242.

was not an impediment to discussing honor with court officials. In addition, the defense lawyers also discussed their clients' honor or feminine traits. A lawyer might state that the defendant had hidden her pregnancy in order to protect her honor or out of a sense of modesty [*pudor*].<sup>69</sup> Starting in the mid-1840s, defense lawyers gathered character witnesses to attest to the honorable qualities of the defendant; for example, to demonstrate that she was hard working, well behaved, and attentive to her parents, and that therefore she could not have become pregnant or killed an infant.<sup>70</sup> Clearly, the community and the officials considered it appropriate to discuss the defendant's honor in court proceedings. The defendants, however, remained silent on this issue.

The place of honor in the courtroom testimony of these cases is distinct from other nineteenth-century cases and opens the possibility of reconsidering our interpretations from the end of the century. As mentioned previously, research on mid-century Puebla and Yucatán provinces (Mexico), and from late nineteenth-century Mexico City and Buenos Aires, finds that defendants frequently discussed their honor. Particularly in the late nineteenth century, defendants and their lawyers asserted that they had committed abortion or infanticide in order to protect their honor or uphold norms of feminine behavior.<sup>71</sup> In contrast, in early republican Mérida, the defendants did not mention honor and the defense lawyers discussed their clients' honor as proof that they did not commit infanticide at all. When comparing these two time periods, there is no reason to assume that women in one era cared more about their honor or that they had significantly different motivations to commit infanticide. And yet, from the mid-century to the late century, defendants' testimony had changed.

Very likely the explanation for this disparity in defendants' testimony lies in the legal changes that occurred at the end of the century rather than in any meaningful change in the culture or honor or the actual motivations of the mothers. By the late nineteenth century, countries throughout Latin America further codified honor into the laws, and classified infanticide as an honor crime that bore a lower sentence than homicide. In other words, the late century infanticide laws incentivized defendants to give testimony that exaggerated the importance of honor and downplayed the importance of other factors. These disparate findings highlight the importance of further research on the early republican period in order to ascertain whether Mérida represents a wider trend for the period or whether it was an outlier.

## Is This Justice?

This article will now explore what society and the state gained through these trials. Given that cases without a confession always ended in acquittal, why

<sup>69</sup> See AGEM, RP, 1811, Infanticidio, Tomo I, Fols: 1–20. “Expediente contra Maria Isabel Rivas...,” f11; AGEM, RP, 1851, Infanticidio, Tomo II, Fols: 176–186. “Expediente contra Estefania Balza...,” f183

<sup>70</sup> See AGEM, RP, 1844, Infanticidio, Tomo I, Fols: 169–183. “Expediente contra Dominga Marquina...”; AGEM, RP, 1856, Infanticidio, Tomo III, Fols: 36–71. “Expediente contra Maria Ana Peña ...”; 1856, Infanticidio, Tomo III, Fols: 72–104; and 1859, Infanticidio, Tomo III, Fols: 216–256.

<sup>71</sup> Jaffary, “Maternity and Morality”; Jaffary, “Medicine, Midwifery”; Jaffary, *Reproduction and its Discontents*; and Ruggiero, “Honor, Maternity.”

prosecute at all? Simply from the standpoint of preserving resources for an indebted, recently independent government, it is curious that the courts orchestrated complex, lengthy investigations and trials when presumably they knew that the case would end in acquittal. In some cases, officials took testimony from fifteen to twenty witnesses, and later went back to take their testimony again. From the onset of the investigation, court officials knew that the case lacked conclusive proof, such as a medical autopsy or eyewitness to the death. Consequently, court officials knew they were unlikely to meet the high standards of evidence necessary to convict the defendant. Why engage in such a long, complicated investigation using scant public resources?

One possible explanation was a lack of institutional memory. Perhaps officials lacked experience with infanticide cases and therefore did not know that, barring a confession, acquittal was nearly assured. After all, in 1830, there was likely no court official who had ever served on an infanticide case. Nonetheless, over the coming years, several officials participated in these cases on numerous occasions, enough to build institutional memory about the futility of prosecution: seventeen men served on two or more cases, holding positions such as prosecutor, defender, judge, or medical doctor. Eight of those men actually held different positions in different trials. For example, Juan José Cosme Jiménez served on twelve cases as a medical doctor; Rafael Alvarado served on seven cases, alternately as prosecutor, defender, and judge; Pedro de Jesús Godoy served on five cases as prosecutor or defense attorney. Therefore, there was sufficient institutional memory, formed from the numerous personnel experienced with the prosecution of this crime, to know the likely outcome of these trials. If lack of institutional memory explained their willingness to prosecute, we would expect that as officials gained experience and learned that conviction was so unlikely, the number of cases would decline. In fact, as time went on, the number of cases increased: there were seven cases in the 1830s, ten in the 1840s, and eleven in the 1850s. Apparently, officials had reasons to prosecute this crime, even when they had experienced the near impossibility of a conviction.

This article argues that the prosecution of infanticide served the province's larger institution- and state-building process. Maintaining a robust judicial system was a fundamental part of the post-independence state's effort to build a republic based on the rule of law. In prosecuting infanticide cases, the court system provided a means for government institutions to achieve justice and resolve social pressures, both of which bolstered state legitimacy. Conviction was not necessary to achieve these ends. The discovery of a dead baby, its body mangled by scavengers or decay, disturbed the community at an emotional and moral level. Civilians experienced a need to restore a sense of order and they turned to government officials to resolve the dilemma. This situation offered officials an opportunity to demonstrate their responsiveness to public needs and their ability to restore order and justice, all of which helped to legitimize the nascent state. Officials often viewed the defendant with pity and mercy. They wanted to uphold social harmony and were inclined to get her back into her community. The judicial process helped to facilitate those ends, whether or not it achieved a conviction.

*The Judicial System as Part of Building a Patriarchal, Republican State*

Issues raised in the infanticide trials reflect wider public debates surrounding the attempt to build a republican polity, specifically the use of the judicial system to maintain social control or to reform the poor and convicts into better republican citizens. With the onset of independence from Spain (1821), political leaders in Venezuela sought to establish a republic based on liberal models of the day; that is, elected government, separation of powers, separation of church and state, civil rights, capitalism, and the abolition of racial and estate privileges. Typical of the spread of liberal republicanism throughout the Atlantic world, all of these efforts served to reinforce traditional patriarchy, such that male privileges remained intact in the law codes, only men could vote, and only propertied men could stand for election.

From the onset of the independence movement, political leaders feared that the poor masses lacked sufficient virtue or moral character, were a potential source of chaos, and therefore needed to undergo reform before the republic could fully achieve stability and prosperity.<sup>72</sup> One aspect of the strategy to create a more capable, more republican citizenry lay in the aspiration to imbue the population with a reverence for obedience to the law. In his famous 1819 speech at Angostura, the independence leader Simón Bolívar expressed these views. Bolívar described his countrymen, after centuries of Spanish “tyranny,” as lacking experience in the responsible exercise of freedom or political agency: “an ignorant people is the blind instrument of its own destruction... the imperium of the laws is more powerful than that of tyrants, because they are more inflexible, and everyone should submit himself to the benefit of their rigor; that proper morals, and not force, are the bases of law; and that the exercise of justice is the exercise of liberty.”<sup>73</sup> After independence, political elites continued to describe the rule of law as the highest standard of ethics and justice, and a robust, independent judiciary as essential in order to achieve liberty, peace, and prosperity.<sup>74</sup> As Tomás Lander, a prominent intellectual and politician, wrote in 1826: “To be free is to obey the law...”<sup>75</sup> In a similar vein, political commentator Cecilio Acosta wrote in 1865, “without the sanction of civil jurisprudence nothing matters... punishment [as laid out in

<sup>72</sup> Miguel Izard, “Periodo de la independencia y la Gran Colombia, 1810-1830,” in *Política y economía en Venezuela, 1810-1976*, ed. Alfredo Boulton (Caracas: Fundación John Boulton, 1976); John V. Lombardi, *Venezuela: The Search for Order, The Dream of Progress* (Oxford: Oxford University Press, 1982); Robert Paul Matthews, *Violencia rural en Venezuela, 1840-1858: Antecedentes socioeconómicos de la guerra federal* (Caracas: Monte Avila Editores, 1977); Elías Pino Iturrieta, *Fueros, civilización y ciudadanía* (Caracas: Universidad Católica Andrés Bello, 2000); and Zahler, *Ambitious Rebels*, ch. 1 and 7.

<sup>73</sup> Simón Bolívar, “Discurso Ante el Congreso de Angostura,” 1819, in *Simón Bolívar: doctrina del Libertador*, ed. Manuel Pérez Vila (Caracas, Venezuela: Biblioteca Ayacucho, 1985), 105.

<sup>74</sup> Elena Plaza, *El patriotismo ilustrado, o la organización del estado en Venezuela, 1830-47* (Caracas: Universidad Central de Venezuela, 2007), 52–53. See also Zahler, *Ambitious Rebels*, 49–52.

<sup>75</sup> Tomás Lander, *Manual del Colombiano o Explicación de la Ley Natural*, in *Pensamiento político venezolano del siglo XIX: textos para su estudio*, ed. El Congreso de la República (Caracas: Ediciones conmemorativas del sesquicentenario de la independencia, 1983), 493.

the Penal Code] does not have social vengeance as its object, but rather the fear and the correction of the prisoner....”<sup>76</sup>

Consequently, the judicial system played a significant role in various aspects of state building, which in many regards was a legacy of the colonial period. The law courts had been a pillar of the colonial regime as a widely used institution that both enforced the law and enabled people to seek justice and mediate disputes.<sup>77</sup> With independence, the state expected that the courts would continue to uphold those roles, although the laws now would be created by an elected congress that presumably reflected the will of the people. In the first decades after independence, Venezuelans used the courts at roughly the same levels as during the colonial period, despite the depopulation and damage to government structures caused by the war years.<sup>78</sup> This ongoing use of the courts indicates that the population continued to trust the courts and to rely on them to resolve disputes and uphold justice.

In Mérida, provincial government officials also emphasized the importance of the judicial system in the effort to maintain order and reform morals, often within discussions or ordinances on subjects such as vagabondage, employment for the poor, gambling, prostitution, and vandalism. Governor Picón considered the appointment of a new judge to be worthy of mention in his 1833 address to the legislature, expressing confidence that Doctor Sulpicio Frías “surely will contribute to improving the tribunals and expediting the administration of justice....”<sup>79</sup> At the same time, municipal leaders frequently sought funds to refurbish the men’s prison buildings, as the current buildings were too dilapidated to facilitate prisoner reform. As Governor Fermín Briceño expressed about the men’s prison to the provincial legislature in 1860, “it is madness to think that here they [the prisoners] can achieve repentance or improvement, work on solitary meditation....”<sup>80</sup>

These larger discussions in Mérida also included the subject of women’s moral reform. The only direct reference to infanticide yet found in public discourse comes from a newspaper article in *El Civil* (1858), which called for increased religious and moral education for the youth as an antidote against the violence that plagued society. The author asserted that religious education could keep “the beautiful or weak sex” from committing infanticide and other sins, and could also teach them to be better, more loyal wives.<sup>81</sup> In another call

<sup>76</sup> Cecilio Acosta, “Reseña histórica y prospecto de código del derecho penal,” in *ibid.*, 9:187.

<sup>77</sup> Michael Scardaville, “(Hapsburg) Law and (Bourbon) Order: State Authority, Popular Unrest, and the Criminal Justice System in Bourbon Mexico City,” in *Reconstructing Criminality in Latin America*, ed. Carlos Aguirre and Robert Buffington (Wilmington, DE: Scholarly Resources, 2000).

<sup>78</sup> Zahler, *Ambitious Rebels*, 99–104.

<sup>79</sup> “Mensaje del Gobernador Juan de Dios Picón dirigido a los honorables Diputados...” Biblioteca Febres Cordero (hereafter BFC), Documentos Históricos (hereafter DH), 1833, Caja 24, Doc 21.

<sup>80</sup> *Exposición que el Gobernador de la Provincia de Mérida dirige a la honorable legislatura provincial en su reunión ordinaria de 1860*. Mérida, Imprenta de Juan de Dios Picón Grillet, 1860. BFC, Colección Tulio Febres Cordero (hereafter TFC), Cota: 177. Also in Cota 177, see *Memoria que dirige el Gobernador* (1849); “Ordenanza 4° de policía de 30 de junio” (1855); in Cota 196, see *Código de las ordenanzas decretos* (1856).

<sup>81</sup> “Educación e instrucción,” *El Civil*, Mérida, October 1, 1858, 2–3, in BFC.

for reform of women, in 1832, Provincial Governor Juan de Dios Picón advocated the construction of a women's prison, or as he put it, "a house of correction and instruction." He explained that a prison would teach the inmates a useful occupation and thereby would correct the women's misbehavior, improve society's morals, and stem the spread of venereal disease. Governor Picón decried as a failure the current practice, which involved putting convicted women into the home of an honorable family to work, because no *padre de familia* (family patriarch) wanted these wayward women in his house.<sup>82</sup>

### *Civilian–Official Cooperation*

As an exercise in republican state building, *Merideño* civilians and officials worked together on the judicial process (the investigation and prosecution) of infanticide cases to a notable degree that indicates a joined sense of purpose. Both civilians and officials appeared deeply upset by acts of infanticide and believed that the state should intervene. Even if children died at much higher rates than they do today, people still found an intentional killing to be deeply disturbing. Every one of these cases began when civilians alerted authorities that they had found a cadaver or had some other reason to suspect infanticide. For instance, in 1831 Juana Mercado explained that she needed to "unburden my conscience" [*para descargo de su conciencia*] when she alerted authorities that she suspected her daughter had killed her newborn.<sup>83</sup> Locals then cooperated with the authorities to identify the mother and served as witnesses, sometimes testifying on multiple occasions throughout the investigation. Judicial authorities also expressed shock and disgust at this crime, describing it with terms such as "horrific," "horrendous," and "atrocious," and also expressing a sense that this crime somehow threatened civilization. For example, a defense attorney whose client had confessed described her actions as "a horrific act that envelops the horror of a filicide at the moment of birth..."<sup>84</sup>

The fact that civilians and officials cooperated in the judicial process of these cases fits into larger trends of nineteenth-century legal culture throughout Latin America. In such disparate locations as early republican Colombia, Peru, Mexico, and Venezuela, civilians used the courts more frequently, and for a wider variety of civil and criminal purposes, than had their colonial predecessors. One reason for this increased use of the courts was the civilians' embrace of newfound rights under the republican system, which prompted more lawsuits and more cooperation with the judicial system.<sup>85</sup> Further, infanticide promoted an unusually high rate of cooperation. In late nineteenth-

<sup>82</sup> "Estadística de la Provincia de Mérida llevada por Juan de Dios Picón." BFC, DH, 1832, Caja 59, Doc 01, f12.

<sup>83</sup> AGEM, RP, 1831, Infanticidio, Tomo I, Fols: 21–36. Expediente contra Tomasa Contreras..." Quote from f23.

<sup>84</sup> AGEM, RP, 1835, Infanticidio, Tomo I, Fols: 51–86. "Expediente contra Maria Alonsa Díaz..." Quote from f174.

<sup>85</sup> See David Bushnell, *The Santander Regime in Gran Colombia* (Newark, DE: University of Delaware Press, 1954), 46; Sarah Chambers, *From Subjects to Citizens: Honor, Gender, and Politics in Arequipa, Peru, 1780–1854* (University Park, PA: The Pennsylvania State University Press, 1999), 141–45; and Laura



century Argentina and central Mexico, abortion and infanticide had high denunciation rates: civilians denounced their neighbors for these crimes and cooperated with authorities in the judicial process to a degree not seen in other types of crimes. The citizenry considered these crimes, which reflected on female sexual morality, to be a matter of public concern and appropriate for state action.<sup>86</sup> In contrast, in the late nineteenth century United States South (i.e., Richmond, Virginia), black neighbors typically offered no information to white investigators of infanticide, presumably in order “to protect their own against the harassment and intervention of whites.”<sup>87</sup>

### Women as Informers

The documentary record indicates that women participated in alerting authorities just as men did. Therefore, we should not view the increased rate of civilian participation simply as a male-driven attempt to control women. For instance, in 1864, Rafaela Fandiño learned that the dead baby found near the town reservoir was the child of her neighbor, and promptly informed a judicial authority and the priest.<sup>88</sup> Admittedly, men informed authorities in 72% (twenty-four) of the cases. However, women participated in the process even if they themselves did not notify authorities. In this patriarchal culture, it was more likely that men would find the cadaver, and it was more appropriate for a male to inform male authorities. Mothers tended to leave the dead babies in remote locations far from the village, areas where men traveled more than women and therefore were more likely to find the cadaver. Further, on several occasions we see that a woman prompted a man to alert state officials about a cadaver rather than doing so herself. For instance, in 1843 a slave boy found an infant’s body in a river and informed a free, adult male named José. José went to nearby house to request a shovel in order to bury the body. The woman of the house, however, told him to tell the authorities, which he did.<sup>89</sup> In 1846, two young women found a body in a cave. One of them told her father, who in turn informed the town’s *Comisionado*.<sup>90</sup> Members of a subaltern group, such as children, slaves, or women, were likely to ask a patriarchal male to inform authorities rather than doing so themselves. Nonetheless, women cooperated with officials throughout the investigation as informers and witnesses.

Shelton, *For Tranquility and Order: Family and Community on Mexico’s Northern Frontier, 1800–1850* (Tucson, AZ: University of Arizona Press, 2010), 15–16.

<sup>86</sup> Jaffary, *Reproduction and its Discontents*, 132–33; Ruggiero, “Honor, Maternity”; and Elisa Speckman Guerra, “Las flores del mal. Mujeres criminales en el porfiriato,” *Historia Mexicana* 47 (1997): 213.

<sup>87</sup> Elna C. Green, “Infanticide and Infant Abandonment in the New South: Richmond, Virginia, 1865–1915,” *Journal of Family History* 24 (1999): 203–4.

<sup>88</sup> AGEM, InvJ, 1863, 7.2 Juzgado de Primera Instancia de La Provincia De Merida. 263/15 (I). “Expediente sobre infanticidio en la parroquia Chiguará,” f1v-2.

<sup>89</sup> AGEM, RP, 1843, Infanticidio, Tomo I, Fols. 147–155. “Averiguación sobre un infanticidio...”

<sup>90</sup> AGEM, RP, 1846, Infanticidio, Tomo I, Fols: 245–265. “Expediente contra Teresa Salas...” See also AGEM, RP, 1849, Infanticidio, Tomo II, Fols: 71–82. “Expediente contra María de la Cruz Rivas...”

*To Protect and Reform the Mother*

*Merideño* authorities may have sought an official investigation not only as a means to seek justice but also in order to protect the mother's safety and "improve" her morals. If family and neighbors suspected a woman of such a serious transgression, left to their own devices they might hurt or kill her. In 1834, authorities jailed María de los Santos for having "entertained" some men. The description of her offense is vague but it was clearly flirtatious or sexual in nature. Her mother and brother came to the jail to collect her and, while there, whipped her. The jailer eventually told them to stop, so they brought Santos home, tied her to a post, and continued to whip her. A neighbor testified that she heard the whipping continue even after Santos had stopped screaming, indicating that she had passed out. Three days later, Santos died.<sup>91</sup> The incident demonstrates not only that women suspected of a sexual transgression had solid reasons to fear their parents but also that they likely could not expect protection from officials or neighbors.

The degree to which community members posed a potential physical threat to mothers is unclear. In the court documents, neighbors denounced mothers to the authorities rather than punish the mothers themselves. Nonetheless, a mother could not rely on neighbors to protect her from her parents, and at times community members could pose a danger. Hernández Milanés, the late colonial bishop of Mérida (1801–12), documented that indigenous communities had an illegal practice by which the indigenous judge, in the presence of a priest, would whip a woman who became pregnant out of wedlock in order to make her confess who had impregnated her.<sup>92</sup> In 1830, when María de Jesús Ortega faced charges of infanticide, the *Jefe del Cantón* urged the *alcalde* to begin the trial as soon as possible given that nobody would bring her food while she was in jail because "the public is vindictive."<sup>93</sup> As another example, we previously saw the case of Natividad Pino, who threw her newborn boy over a high wall into the neighbor's yard. The neighbor confronted Natividad with a sword and demanded that she confess to the crime.<sup>94</sup> Under those circumstances, when officials jailed a suspect, they not only demonstrated their legal authority but also may have saved her life.

The legal process also could include an intent to punish the mother and "correct" her moral character. In republican Venezuela and elsewhere in the Hispanic world, the judicial system upheld a colonial tradition by which the courts took on the role of the stern patriarch with regards to single women or women who violated gender norms, issuing sentences designed to constrain their behavior and promote moral reform.<sup>95</sup> For instance, the judges in Mérida

<sup>91</sup> AGEM, RP, 1834, Homicidios y muertes violentas, Tomo IX, Fols: 80–125. "Expediente contra Prudencia Toro y Lorenzo Parra..."

<sup>92</sup> Osorio, *Los Andes Venezolanos*, 210.

<sup>93</sup> AGEM, RP, 1830, Heridas, Tomo VI, Fols: 178–183. "Expediente contra María de Jesús Ortega..." Quote from f178.

<sup>94</sup> AGEM, RP, 1851, Infanticidio, Tomo II, Fols: 133–175.

<sup>95</sup> Chambers, *From Subjects to Citizens*, 214; María José de la Pascua Sánchez, "Women Alone in Enlightenment Spain," in *Eve's Enlightenment: Women's Experience in Spain and Spanish America*,

frequently acquitted the defendant but still required her to pay court costs and/or asserted that the time she served in jail was sufficient. As if, even though acquitted of all charges, the court should still punish her. Or court officials might be more overt, as in 1856 when neighbors found the dead newborn son of Josefa Briceño in the river with what appeared to be strangulation marks. The prosecutor asserted that she had killed her child, but said that as “she did not deserve the punishment established by law for infanticide due to certain extenuating circumstances surrounding the confirmed facts of the case, she should receive a correctional punishment [*debe imponérsele una correccional*].” The judge said that he did not believe Briceño’s defense story but that there was insufficient evidence to convict her, and considering the 16 months she had already spent in jail, he released her.<sup>96</sup> Also seeking a form of “correction,” the local judge that convicted Natividad Pino of infanticide gave her a reduced sentence: “eight years of reclusion in the house of an honorable *vecino* who will oversee her conduct without allowing her to leave from his house, ensuring that she is always productively occupied.”

### To Protect the Father

The prosecution of this crime also served to protect patriarchal privileges by shielding the father from responsibility to the mother or the child. The *Siete Partidas* (the still-applicable medieval law code) held that men were responsible to protect, provide, and care for their children, even those born out of wedlock.<sup>97</sup> Consistent with colonial codes, republican law held that getting pregnant out of wedlock was un *delito* (crime, misdeed), and that the mother or her parents could press charges against the father.<sup>98</sup> Nonetheless, judicial officials rigorously endeavored to leave the father’s identity out of the case. This unwillingness even to identify the father indicates a desire on the part of judicial officials to discount men from “reproductive responsibility,” and instead to put all the responsibility of caring for the child on the mother, a strategy in no way unique to Venezuela.<sup>99</sup> Even in rare instances in which witnesses identified the father to authorities, they did not question him or involve him in the case.<sup>100</sup> Had the court involved the father, officials could have interrogated him as a witness to the mother’s state of mind or to the death itself, or charged him as a suspect or co-conspirator, or required him to provide some support to the acquitted defendant who had recently suffered so much. And yet, officials and civilians cooperated in a process that immunized the father from

1726-1839, ed. Catherine Jaffe and Elizabeth Franklin Lewis (Baton Rouge, LA: Louisiana State University, 2009), 133; and Pino Iturrieta, *Contra lujuria*, 125–26.

<sup>96</sup> AGEM, RP, 1856, Infanticidio, Tomo III, Fols: 72–104. “Expediente contra Josefa Briceño...” Quote from f98.

<sup>97</sup> *Siete Partidas*, Partida 4, Título 19, Ley 5.

<sup>98</sup> Osorio, *Los Andes Venezolanos*, 210.

<sup>99</sup> I have borrowed the term “reproductive responsibility” from Carey, *I Ask for Justice*, 128–29. See also Ruggiero, “Honor, Maternity,” 360; and Shelton, “Bodies of Evidence,” 468.

<sup>100</sup> For example, AGEM, RP, 1857, Infanticidio, Tomo III, Fols: 144–159. “Expediente contra Maria Pilar Palma...”

investigation, prosecution, or really any involvement whatsoever. Presumably, within the eyes of the court, erasing the father from the proceedings either made them more just, or at least did not prevent the proceedings from achieving justice.

On occasion, the officials had reasons to suspect that the father had played a role in the infant's death or in hiding the body, but still they refused to follow that line of investigation. For example, in a case from 1858, the mother implied that a man named Abdón Peña was the father, and asserted that he had brutalized and buried the body of their stillborn child. Nonetheless, officials minimized his involvement in the case. They waited a month after her testimony to interrogate Peña and, after he simply denied what the mother had said, they let him go. The prosecutor suggested to the judge that Peña was the father, but did not seek further information from him. Authorities re-interviewed seven witnesses, which was typical, but they did not re-interview Peña. The judge acquitted the mother for lack of evidence.<sup>101</sup>

In rare instances when officials sought information about the father, they did so not to implicate him in the crime but rather to focus attention onto the mother. For example, in 1849, María de la Cruz Rivas at first denied charges that she was the mother of the dead baby found in a gorge with two severe head wounds. She insisted that she had never been pregnant and in fact was still a virgin. Acting on a tip, authorities interviewed her brother-in-law, who admitted that he and Rivas were lovers and that she had become pregnant. When presented with his testimony, María confessed that the baby was hers. She explained that she went into labor while out gathering firewood, that the baby was stillborn, and that her firewood accidentally fell on the baby and gave it the head wounds. Given that both Rivas and her brother-in-law had a strong motive to hide the fruit of their adulterous affair, interrogating him would seem an obvious step in the investigation. Nonetheless, officials sought no information from him other than to identify Rivas as the mother. Ultimately, the judge ruled that there was no evidence to contradict Rivas's account and acquitted her.<sup>102</sup> To return to the first case addressed in this article, in 1847, María de Jesús Zerpa explained that she had given birth to a stillborn child while gathering firewood 3 miles from her house. The prosecutor asked Zerpa's mother if her daughter was angry at the father, and she responded that her daughter had refused to reveal anything about the father. The prosecutor never asked Zerpa who the father was or about her feelings toward him. Nonetheless, he recommended acquittal, based in part on the fact that Zerpa "does not hate he who impregnated her..."<sup>103</sup> In other words, the prosecutor recast Zerpa's silence about the father as lack of animus, and rewarded her silence with a recommendation to acquit.

<sup>101</sup> AGEM, RP, 1858, *Infanticidio*, Tomo III, Fols: 191-215. "Expediente contra Carmen Peña..."

<sup>102</sup> AGEM, RP, 1849, *Infanticidio*, Tomo II, Fols: 71-82. "Expediente contra María de la Cruz Rivas..."

<sup>103</sup> AGEM, RP, 1847, *Infanticidio*, Tomo II, Fols: 19-34. "Expediente contra Maria de Jesús Zerpa..."  
Quote from f31.

We know from the other cases that the prosecutors did not want to know the father's identity. However, at times, they asked about the father in order to understand the defendant's state of mind or to prove that she was the baby's mother. Ironically, even when investigators asked questions about the father, they did so in such a way as to shield him and to focus attention on the mother.

## Conclusion

With the onset of independence, the judicial system of Mérida province began to prosecute infanticide cases, which it had not done previously. This change fit into larger nineteenth-century trends by which Latin American states consolidated themselves in part by advancing patriarchal power, which included the increased institutional repression of women, particularly single women. Although the colonial state rarely investigated infanticide, early republican Mérida province prosecuted numerous infanticide cases, all of which ended in acquittal unless the defendant confessed. The prosecution of infanticide occurred in some early republican provinces but not in others; in Mexico, it occurred in Puebla and Yucatán but not in Sonora, while in Venezuela it occurred only in Mérida province. The decision to prosecute infanticide, then, was not an inevitable outcome of independence, but apparently Mérida officials viewed the prosecution as beneficial to the administration of justice and institution building. As part of this larger republican project, the infanticide cases illuminate a partnership between the public and state institutions to increase the surveillance of the sexual behavior of poor women and cast state institutions in the role of a stern patriarch that would oversee their moral improvement. This cache of documents enables us to investigate not only the crime itself but also socioeconomic conditions for poor women as well as how the courts participated in the project to build a liberal, patriarchal state.

In their testimony, defendants indicated that fear, emotional isolation, and economic pressures were the main reasons that they killed their children or abandoned their stillborn bodies. The most frequent reason they gave for why they hid their pregnancies and the cadavers was that they were afraid of being beaten or killed by their parents. They also described grinding poverty, fear that they would lose their job or their housing, and no support during the pregnancy and birth. Less frequently they said that they wanted to send a message to the father or that they were insane. The absence of honor from defendants' testimony is surprising and raises numerous questions. In contrast, late nineteenth-century defendants in other Latin American countries claimed that they acted to protect their honor. Scholarship indicates that the importance of honor and other factors that drove infanticide (e.g., poverty, fear of punishment) remained consistent across the nineteenth century. Therefore, it seems probable that late century changes in the law codes—which offered a much-reduced sentence if a mother killed her infant in order to protect her honor—induced defendants to focus their testimony on honor.

The prosecution of infanticide in Mérida offered a ritual that served several purposes, the success of which did not depend on conviction. Among these benefits was the legitimization of the provincial government within this nascent state. The judicial process (i.e., the investigation and prosecution) helped to forge a bond between state and society, maintained social order, and offered a means to “improve” the mother’s morals. The discovery of the mutilated body of a dead baby created a problem, as it horrified the *vecinos*, and they felt compelled to act to restore a sense of moral order. Civilians, including women, participated energetically in the process: they informed officials, denounced the suspect, helped in the investigation, and served as witnesses repeatedly during the court case. When civilians turned the matter over to the justice system, they bonded with government officials in a common cause, befitting the republican ethos of the day. In turn, the judicial process provided the community a catharsis or resolution, as *vecinos* could know that they had done something and that authorities now handled the matter. The judicial process, then, served several goals: it created a bond between the public and provincial institutions and it legitimized the state, as civilians could see that the judicial authorities enforced the law and justice.

The process also helped to maintain social harmony and order as it protected the mother and father (although in different ways) and facilitated their ability to remain within their community. Left to their own devices, family and *vecinos* might attack the mother and the father. In the tumult, the mother might publicly reveal the identity of the father, which could pressure him to take responsibility for the mother and child. The state-led investigation and prosecution helped to mollify a potentially unstable situation that could result in violence and force men to take more responsibility for illicit sex.

Authorities protected the mother, taught her a moral lesson, and made her the sole focus of the investigation. Authorities put the mother in jail, which separated her from her neighbors. By the time the court acquitted the mother, months had passed, the community’s passions had time to abate, the mother had suffered, and the court had proclaimed that she was innocent, or at least that she wasn’t guilty. For the mother, life likely never returned to the status quo ante, as her reputation had been severely damaged, to say nothing of the emotional toll she had endured. However, because her neighbors could see that she had suffered in jail, perhaps they no longer felt compelled to punish her and could allow her back into her “normal” roles. It is quite possible that an official denunciation and arrest created a better outcome in the long term for the mother than she could hope for if the community handled the matter on its own.

The judicial process also protected the father, and by extension other males in the community, from reproductive responsibility. Court officials prosecuted the mother and turned a blind eye to the father. In so doing, the judicial system provided locals with a level of satisfaction as it diverted attention away from the father and thereby protected him from acts of vengeance by the mother or others. The process also protected the very officials who ran the judicial system, some of whom assuredly engaged in extramarital affairs themselves. After all, since the colonial period, the population of Mérida had engaged in

“inappropriate” sexual relationships between unmarried people, sometimes between people of disparate racial and socioeconomic status.<sup>104</sup> The way in which the judiciary handled infanticide cases demonstrates that a man could have sex with an unmarried woman and avoid any social, financial, or penal responsibility for her pregnancy. The prosecution of infanticide thus served numerous purposes by providing a mechanism to forge a republican polity, establish order, and enforce patriarchal privileges.

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<sup>104</sup> See Luis Alberto Ramírez Méndez, “Los amantes consensuales en Mérida colonial,” *Procesos Históricos. Revista de Historia y Ciencias Sociales* 1 (2002): 145–66.

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